

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:

| | | |
|--------------------------|---|----------------------------------|
| RECODIFICATION OF |) | Administrative Cause |
| DEFINITIONS RULE |) | Number: 07-001A |
| (312 IAC 1) |) | (LSA Document #07-111(F)) |

RECOMMENDATION FOR FINAL ACTION ON READOPTION OF RULE

A. INTRODUCTION

For consideration is the final adoption of the recodification of the Definitions rule article (312 IAC 1). The definitions provided in this article apply throughout 312 IAC unless “a definition in this article conflicts with a definition of specific applicability in another part of [312 IAC] title or in a statute that controls another part of [312 IAC], the definition of specific applicability controls”. The text of 312 IAC 1 is attached in the Appendix.

In April 2002, the Natural Resources Commission approved delegations of authority with respect to recodifications. Where no amendments are proposed, and rules would be readopted in their current form, the Director of the Division of Hearings may approve preliminary action. The standard practice would be to readopt by article. The Commission retained authority to take final action on recodifications.

No amendments were proposed to the rule article, 312 IAC 1, and they would be readopted in their current form. The Director of the Division of Hearings approved preliminary action. 312 IAC 1 is now submitted for consideration as to final action.

B. RECODIFICATION ANALYSES UNDER IC 4-22-2-3.1

The review of the history lines of each section within 312 IAC 1 indicates amendments have not been made to existing language since the previous 2001 recodification of this article. However, 312 IAC 1-1-29.3, which defines “Universal transverse Mercator” or “UTM”, was added in 2004 to reflect the use of the Global Positioning System (GPS) to designate specific locations as supplied within several articles under 312 IAC (such as 312 IAC 5). Assumptions can be made that these definitions are appropriate.

No complaints or comments have been documented concerning the implementation of 312 IAC 1. The rule does not impose any requirements or costs on small businesses under IC 4-22-2.5-3.1.

C. NOTICE OF INTENT TO READOPT AND RECOMMENDATION FOR FINAL ACTION

A “Notice of Intent to Readopt” was published in the Indiana REGISTER on February 21, 2007 as anticipated by IC 4-22-2.5-2 and IC 4-22-2.5-4. The notice indicated the intention to readopt the entirety of 312 IAC 1 without changes. The notice provided that a person had 30 days to submit a written request to the Natural Resources Commission seeking to have a particular section of the rule be readopted separately from the general recodification. If such a request is made, the Commission would be required to complete the full rule adoption process for the section. No written request has been received.

Where no request is received, the Commission may either submit the rule for filing with the publisher under IC 4-22-2-35 or elect the procedure for recodification under IC 4-22-2. The recommendation is that the Commission readopt 312 IAC 1 as attached and submit the rule for filing with the publisher under IC 4-22-2-35.

Dated: April 19, 2007

Jennifer M. Kane
Hearing Officer

APPENDIX

TITLE 312 NATURAL RESOURCES COMMISSION

ARTICLE 1. DEFINITIONS

Rule 1. Definitions

312 IAC 1-1-1 Applicability

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 1. (a) Except as provided in subsection (b), the definitions contained in this article apply throughout this title.

(b) If a definition in this article conflicts with a definition of specific applicability in another part of this title or in a statute that controls another part of this title, the definition of specific applicability controls. *(Natural Resources Commission; 312 IAC 1-1-1; filed Dec 1, 1995, 10:00 a.m.: 19 IR 656; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)*

312 IAC 1-1-2 “Administrative law judge” defined

Authority: IC 14-10-2-4

Affected: IC 4-21.5; IC 14-10-2-2; IC 25

Sec. 2. “Administrative law judge” refers to a person appointed by the commission under IC 14-10-2-2 to function as an administrative law judge under IC 4-21.5. *(Natural Resources Commission; 312 IAC 1-1-2; filed Dec 1, 1995, 10:00 a.m.: 19 IR 656; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)*

312 IAC 1-1-3 “Animal” defined

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 3. “Animal” includes all:

- (1) mammals;
- (2) birds;
- (3) reptiles;
- (4) amphibians;
- (5) fish;
- (6) crustaceans; and
- (7) mollusks.

(Natural Resources Commission; 312 IAC 1-1-3; filed Dec 1, 1995, 10:00 a.m.: 19 IR 656; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)

312 IAC 1-1-4 “Board” defined

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 4. “Board” means each of the following:

- (1) Advisory council for the bureau of lands and cultural resources.
- (2) Advisory council for the bureau of water and resource regulation.
- (3) Board of trustees for the division of state museums and historic sites.

- (4) Commission.
- (5) Historic preservation review board.
- (6) Soil conservation board.
- (7) Surface coal mine reclamation bond pool fund committee.

(Natural Resources Commission; 312 IAC 1-1-4; filed Dec 1, 1995, 10:00 a.m.: 19 IR 656; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)

312 IAC 1-1-5 “Boundary waters” defined

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 5. “Boundary waters” means the following:

- (1) The part of the Wabash River that forms the boundary between Illinois and Indiana.
- (2) The part of the Ohio River that forms the boundary between Kentucky and Indiana.
- (3) The part of the Great Miami River that forms the boundary between Ohio and Indiana.
- (4) The part of Lake Michigan that is under the jurisdiction of Indiana.
- (5) The lakes other than Lake Michigan that are on the boundary between Indiana and bordering states.

(Natural Resources Commission; 312 IAC 1-1-5; filed Dec 1, 1995, 10:00 a.m.: 19 IR 657; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)

312 IAC 1-1-6 “Bureau” defined

Authority: IC 14-10-2-4

Affected: IC 14-9-3-1; IC 15

Sec. 6. “Bureau” refers to any bureau created within the department under IC 14-9-3-1. *(Natural Resources Commission; 312 IAC 1-1-6; filed Dec 1, 1995, 10:00 a.m.: 19 IR 657; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)*

312 IAC 1-1-7 “Chase” defined

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 7. “Chase” means following wildlife without the intent to take. *(Natural Resources Commission; 312 IAC 1-1-7; filed Dec 1, 1995, 10:00 a.m.: 19 IR 657; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)*

312 IAC 1-1-8 “Commission” defined

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 8. “Commission” means the natural resources commission. *(Natural Resources Commission; 312 IAC 1-1-8; filed Dec 1, 1995, 10:00 a.m.: 19 IR 657; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)*

312 IAC 1-1-9 “Conservation officer” defined

Authority: IC 14-10-2-4

Affected: IC 14-9-8-1; IC 25

Sec. 9. “Conservation officer” has the meaning set forth in IC 14-9-8-1. *(Natural Resources Commission; 312 IAC 1-1-9; filed Dec 1, 1995, 10:00 a.m.: 19 IR 657; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)*

312 IAC 1-1-10 “Department” defined

Authority: IC 14-10-2-4

Affected: IC 14-9-1-1; IC 25

Sec. 10. “Department” refers to the department of natural resources created by IC 14-9-1-1. *(Natural Resources Commission; 312 IAC 1-1-10; filed Dec 1, 1995, 10:00 a.m.: 19 IR 657; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)*

312 IAC 1-1-11 “Deputy director” defined

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 11. “Deputy director” refers to the deputy director of the bureau that supervises a division. *(Natural Resources Commission; 312 IAC 1-1-11; filed Dec 1, 1995, 10:00 a.m.: 19 IR 657; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)*

312 IAC 1-1-12 “Director” defined

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 12. “Director” refers to the director of the department. *(Natural Resources Commission; 312 IAC 1-1-12; filed Dec 1, 1995, 10:00 a.m.: 19 IR 657; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)*

312 IAC 1-1-13 “Division” defined

Authority: IC 14-10-2-4

Affected: IC 14-9-4; IC 25

Sec. 13. “Division” refers to a division established under IC 14-9-4. *(Natural Resources Commission; 312 IAC 1-1-13; filed Dec 1, 1995, 10:00 a.m.: 19 IR 657; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)*

312 IAC 1-1-14 “Division director” defined

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 14. “Division director” means the director of a division. *(Natural Resources Commission; 312 IAC 1-1-14; filed Dec 1, 1995, 10:00 a.m.: 19 IR 657; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)*

312 IAC 1-1-15 “Flood plain” defined

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 15. “Flood plain” means the area adjoining a river or stream that has been or may be covered by flood water. *(Natural Resources Commission; 312 IAC 1-1-15; filed Dec 1, 1995, 10:00 a.m.: 19 IR 657; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)*

312 IAC 1-1-16 “Floodway” defined

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 16. "Floodway" means:

- (1) the channel of a river or stream; and
- (2) the parts of the flood plain adjoining the channel that are reasonably required to efficiently carry and discharge the flood water or flood flow of a river or stream.

(Natural Resources Commission; 312 IAC 1-1-16; filed Dec 1, 1995, 10:00 a.m.: 19 IR 657; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)

312 IAC 1-1-17 "Ground water" defined

Authority: IC 14-10-2-4

Affected: IC 14-25-7-3; IC 25

Sec. 17. (a) "Ground water" means, except as provided in subsection (b), all water that fills the natural openings made under the earth's surface. The term includes the following:

- (1) Underground watercourses.
- (2) Artesian basins.
- (3) Reservoirs.
- (4) Lakes.
- (5) Other bodies of water below the earth's surface.

(b) For purposes of IC 14-25-7, "ground water" has the meaning set forth in IC 14-25-7-3. *(Natural Resources Commission; 312 IAC 1-1-17; filed Dec 1, 1995, 10:00 a.m.: 19 IR 658; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)*

312 IAC 1-1-18 "Hearing officer" defined

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 18. "Hearing officer" refers to a person or persons who conduct a hearing for a board or the department other than as an administrative law judge. *(Natural Resources Commission; 312 IAC 1-1-18; filed Dec 1, 1995, 10:00 a.m.: 19 IR 658; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)*

312 IAC 1-1-19 "Hunt" defined

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 19. "Hunt" means to take a wild animal except by trapping. *(Natural Resources Commission; 312 IAC 1-1-19; filed Dec 1, 1995, 10:00 a.m.: 19 IR 658; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)*

312 IAC 1-1-19.5 "Includes" defined

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 19.5. "Includes" means includes, but is not limited to. *(Natural Resources Commission; 312 IAC 1-1-19.5; filed May 11, 2004, 9:00 a.m.: 27 IR 3065)*

312 IAC 1-1-20 "Individual" defined

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 20. "Individual" means a human person. (*Natural Resources Commission; 312 IAC 1-1-20; filed Dec 1, 1995, 10:00 a.m.: 19 IR 658; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895*)

312 IAC 1-1-21 "Lake" defined

Authority: IC 14-10-2-4

Affected: IC 14-15; IC 14-26-3-1; IC 25

Sec. 21. (a) "Lake" means, except as provided in subsections (b) and (c), a reasonably permanent body of water substantially at rest in a depression in the surface of the earth, if both the depression and the body of water are of natural origin or part of a watercourse. If part of a watercourse, a lake may be formed by damming a river or stream.

(b) For purposes of IC 14-15, "lake" means a natural or an artificial lake.

(c) For purposes of IC 14-26-3, "lake" has the meaning set forth in IC 14-26-3-1. (*Natural Resources Commission; 312 IAC 1-1-21; filed Dec 1, 1995, 10:00 a.m.: 19 IR 658; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895*)

312 IAC 1-1-22 "Law" defined

Authority: IC 14-10-2-4

Affected: IC 4-21.5-1-7; IC 14; IC 25

Sec. 22. "Law" has the meaning set forth in IC 4-21.5-1-7. (*Natural Resources Commission; 312 IAC 1-1-22; filed Dec 1, 1995, 10:00 a.m.: 19 IR 658; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895*)

312 IAC 1-1-23 "License" defined

Authority: IC 14-10-2-4

Affected: IC 4-21.5-1-8; IC 14-8-2-152; IC 25

Sec. 23. "License", except as provided in IC 14-8-2-152, has the meaning set forth in IC 4-21.5-1-8. (*Natural Resources Commission; 312 IAC 1-1-23; filed Dec 1, 1995, 10:00 a.m.: 19 IR 658; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895*)

312 IAC 1-1-24 "Navigable" defined

Authority: IC 14-10-2-4

Affected: IC 4-21.5; IC 14-29-1-2; IC 25

Sec. 24. (a) "Navigable" means a waterway that has been declared to be navigable or a public highway by one (1) or more of the following:

- (1) A court.
- (2) The Indiana general assembly.
- (3) The United States Army Corps of Engineers.
- (4) The Federal Energy Regulatory Commission.
- (5) A board of county commissioners under IC 14-29-1-2.
- (6) The commission following a completed proceeding under IC 4-21.5.

(b) To assist in the administration of this title, a "Roster of Indiana Waterways Declared Navigable" is set forth at 15 IR 2385. This roster is not dispositive of whether a waterway is or is not navigable. (*Natural Resources Commission; 312 IAC 1-1-24; filed Dec 1, 1995, 10:00 a.m.: 19 IR 658; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895*)

312 IAC 1-1-25 "Order" defined

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 25. "Order" means an action by the department (including a board, other than the commission, of the department) of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons. (*Natural Resources Commission; 312 IAC 1-1-25; filed Dec 1, 1995, 10:00 a.m.: 19 IR 658; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895*)

312 IAC 1-1-26 "Ordinary high watermark" defined

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 26. "Ordinary high watermark" means the following:

(1) The line on the shore of a waterway established by the fluctuations of water and indicated by physical characteristics. Examples of these physical characteristics include the following:

(A) A clear and natural line impressed on the bank.

(B) Shelving.

(C) Changes in character of the soil.

(D) The destruction of terrestrial vegetation.

(E) The presence of litter or debris.

(2) Notwithstanding subdivision (1), the shore of Lake Michigan at five hundred eighty-one and five-tenths (581.5) feet I.G.L.D., 1985 (five hundred eighty-two and two hundred fifty-two thousandths (582.252) feet N.G.V.D., 1929).

(*Natural Resources Commission; 312 IAC 1-1-26; filed Dec 1, 1995, 10:00 a.m.: 19 IR 659; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895*)

312 IAC 1-1-27 "Person" defined

Authority: IC 14-10-2-4

Affected: IC 4-21.5-1-11; IC 14-8-2-202; IC 25

Sec. 27. "Person", except as provided in IC 14-8-2-202, has the meaning set forth in IC 4-21.5-1-11. (*Natural Resources Commission; 312 IAC 1-1-27; filed Dec 1, 1995, 10:00 a.m.: 19 IR 659; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895*)

312 IAC 1-1-27.5 "State plane coordinate" or "SPC" defined

Authority: IC 14-10-2-4

Affected: IC 14; IC 32-19-1-1

Sec. 27.5. "State plane coordinate" or "SPC" has the meaning set forth in IC 32-19-1-1. (*Natural Resources Commission; 312 IAC 1-1-27.5; filed May 11, 2004, 9:00 a.m.: 27 IR 3065*)

312 IAC 1-1-28 "Surface water" defined

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 28. "Surface water" means all water occurring on the surface of the ground. The term includes the following:

(1) Water in a stream.

(2) Natural and artificial lakes.

(3) Ponds.

(4) Swales.

(5) Marshes.

(6) Diffused surface water.

(Natural Resources Commission; 312 IAC 1-1-28; filed Dec 1, 1995, 10:00 a.m.: 19 IR 659; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)

312 IAC 1-1-29 “Ultimate authority” defined

Authority: IC 14-10-2-4

Affected: IC 4-21.5-1-15; IC 14; IC 25

Sec. 29. “Ultimate authority” has the meaning set forth in IC 4-21.5-1-15. *(Natural Resources Commission; 312 IAC 1-1-29; filed Dec 1, 1995, 10:00 a.m.: 19 IR 659; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)*

312 IAC 1-1-29.3 “Universal transverse mercator” or “UTM” defined

Authority: IC 14-10-2-4

Affected: IC 14

Sec. 29.3. “Universal transverse mercator” or “UTM” means UTM Zone 16, NAD 83, in meters. *(Natural Resources Commission; 312 IAC 1-1-29.3; filed May 11, 2004, 9:00 a.m.: 27 IR 3065)*

312 IAC 1-1-29.5 “Waterway” defined

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 29.5. “Waterway” means:

- (1) a river;
- (2) a stream;
- (3) a creek;
- (4) a run;
- (5) a channel;
- (6) a ditch;
- (7) a lake;
- (8) a reservoir; or
- (9) an embayment.

(Natural Resources Commission; 312 IAC 1-1-29.5; filed Feb 7, 2000, 3:31 p.m.: 23 IR 1363; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)

312 IAC 1-1-30 “Wild animal” defined

Authority: IC 14-10-2-4

Affected: IC 14-22-38-6; IC 25

Sec. 30. (a) “Wild animal”, except as provided in subsection (b), means an animal whose species usually:

- (1) lives in the wild; or
- (2) is not domesticated.

(b) For the purposes of IC 14-22-38-6, “wild animal” has the meaning set forth in IC 14-22-38-6. *(Natural Resources Commission; 312 IAC 1-1-30; filed Dec 1, 1995, 10:00 a.m.: 19 IR 659; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)*

*